

9 Official Opinions of the Compliance Board 44 (2013)

◆ Exceptions Permitting Closed Sessions

- *Legal Advice, §10-508(a)(7) – Within exception*
 - ◆ advice on legality of assessing fees against county

*Topic headings correspond to those in the Opinions Index (2010 edition) at
<http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

September 13, 2013

Re: Mayor and Council, City of Rockville
Joseph Jordan, Complainant

We have considered the complaint of Joseph Jordan (“Complainant”), that the Council of the City of Rockville violated the Open Meetings Act (“the Act”) by discussing, in a closed meeting with its legal counsel on May 20, 2013, the question of whether the City could assess its stormwater management fee against Montgomery County. Complainant states that “Rockville’s elected officials, City Manager, and City Attorney should have discussed the issue in open session.”

The City Council, by its attorney, responded by sending us a copy of its sealed minutes for the closed session and by stating that the discussion fell within the statutory authority it had cited as a basis for excluding the public. Under the authority cited by the City Council, State Government Article (“SG”) § 10-508(a) (7) and (8), a public body may close a meeting to “consult with counsel to obtain legal advice” and “consult with staff, consultants, or other individuals about pending or potential litigation.”

We may inspect a public body’s sealed minutes when they are relevant to a complaint, but we must maintain the confidentiality of their contents. SG § 10-502.5(c) (ii). Therefore, as is our practice, we will refer only generally to the content of the sealed minutes of the May 20 meeting. Those minutes show us that counsel gave legal advice about the administration of an existing law and that the discussion did not stray into the formulation of future law. We therefore find that the session was properly closed under SG § 10-508(a) (7). The applicability of SG § 10-508(a) (8) to the discussion is unclear, but staff attended the meeting, and it would have been reasonable for the City Council to claim the exception to give itself the flexibility to discuss potential litigation with them as well as with legal counsel. We therefore find that the City Council did not violate the Act by citing SG § 10-508(a) (8) as additional authority for closing the meeting.

In conclusion, the City Council did not violate the Act by choosing to close part of its May 20 meeting under SG § 10-508(a)(7) and (8). We do not reach Complainant's contention that the City Council *ought* to have discussed the issue in an open session, because we only have the authority to address whether a violation has occurred.

Open Meetings Compliance Board

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